

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

TEVRA BRANDS LLC,

Plaintiff,

v.

BAYER HEALTHCARE LLC, et al.,

Defendants.

Case No. 19-cv-04312-BLF

**ORDER GRANTING  
ADMINISTRATIVE MOTION TO SEAL**

[Re: ECF No. 496]

Before the court is Bayer's Administrative Motion to Seal. ECF No. 496. For the reasons described below, the administrative motion is GRANTED.

**I. LEGAL STANDARD**

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, "a 'strong presumption in favor of access' is the starting point." *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are "more than tangentially related to the underlying cause of action" bear the burden of overcoming the presumption with "compelling reasons" that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

Records attached to motions that are "not related, or only tangentially related, to the merits of a case," however, are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 ("[T]he public has less of a need for access to

1 court records attached only to non-dispositive motions because those documents are often  
 2 unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving to seal  
 3 the documents attached to such motions must meet the lower “good cause” standard of Rule  
 4 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This standard  
 5 requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the  
 6 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
 7 1210–11 (9th Cir. 2002); *see* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated  
 8 by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins.*  
 9 *Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

## 10 II. DISCUSSION

11 Bayer filed the Administrative Motion to Seal on August 19, 2024. ECF No. 496; ECF  
 12 No. 496-1 (“Boshkoff Decl.”). Bayer writes that the information should be sealed because the  
 13 “These portions of the admitted exhibits contain highly confidential, sensitive business  
 14 information relating to Bayer’s internal sales, marketing, and pricing strategies and agreements  
 15 with retailers and distributors. If this information were made public, competitors and counterparts  
 16 would have insight into how Elanco, as successor to Bayer HealthCare LLC, structures its  
 17 business arrangements, allowing them to modify their own business strategy.” Boshkoff Decl. ¶ 3.  
 18 Bayer argues that the portions are narrowly tailored. *Id.* ¶ 6.

19 The Court finds that compelling reasons exist to seal the highlighted portions of the  
 20 document. *See Finjan, Inc. v. Proofpoint, Inc.*, No. 13-CV-05808-HSG, 2016 WL 7911651, at \*1  
 21 (N.D. Cal. Apr. 6, 2016) (finding “technical operation of [defendant's] products” sealable under  
 22 “compelling reasons” standard); *Exeltis USA Inc. v. First Databank, Inc.*, No. 17-CV-04810-HSG,  
 23 2020 WL 2838812, at \*1 (N.D. Cal. June 1, 2020) (noting that courts have found “confidential  
 24 business information” in the form of “business strategies” sealable under the compelling reasons  
 25 standard.). The Court also finds that the request is narrowly tailored.

26 The Court’s ruling is summarized below:

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Trial Ex. No.	Document	Portion(s) to Seal	Ruling
3	<b>Trial Exhibit 3:</b> 2017 Wave 2 Pet Owner – Awareness & Usage DRAFT Report	Document in entirety	Granted, as it contains confidential information relating to Bayer’s marketing strategies and survey methods. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
10	<b>Trial Exhibit 10:</b> Petco 2016-2018 Retailer Agreement	Highlighted portions	Granted, as it contains confidential information relating to Bayer’s agreements with retailers. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
28	<b>Trial Exhibit 28:</b> Bayer email to PetSmart	Highlighted portion	Granted, as it contains confidential information relating to Bayer’s agreements with retailers. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
33	<b>Trial Exhibit 33:</b> 2017 Wave 1 Pet Owner – Awareness & Usage FINAL Report	Document in entirety	Granted, as it contains confidential information relating to Bayer’s marketing strategies and survey methods. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
42	<b>Trial Exhibit 42:</b> Pet Owner Awareness & Usage Presentation – Wave 2 2016 IPSOS Animal Health	Document in entirety	Granted, as it contains confidential information relating to Bayer’s marketing strategies and survey methods. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
47	<b>Trial Exhibit 47:</b> Pet Insight 2019 Pet Owner Awareness & Usage Study	Document in entirety	Granted, as it contains confidential information relating to Bayer’s marketing strategies and survey methods. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
50	<b>Trial Exhibit 50:</b> Management Approval Form	Highlighted portions on pp.1 and 4-7	Granted, as it contains confidential information relating to Bayer’s agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
65	<b>Trial Exhibit 65:</b> 2016 Brand Plans Presentation	Document in entirety	Granted, as it contains confidential information relating to Bayer’s marketing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
66	<b>Trial Exhibit 66:</b> Global Integrated Communication Concept Briefing	Highlighted portions at pp.2-7	Granted, as it contains confidential information relating to Bayer’s marketing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
69	<b>Trial Exhibit 69:</b> 2018 Pet Owner Awareness & Usage Study – Dog Report	Document in entirety	Granted, as it contains confidential information relating to Bayer’s marketing strategies and survey methods. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
78	<b>Trial Exhibit 78:</b> Willingness to Pay Study	Document in entirety	Granted, as it contains confidential information relating to Bayer’s pricing strategies and survey methods. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
79	<b>Trial Exhibit 79:</b> 2019 Brand + Competitive Updates Presentation	Document in entirety	Granted, as it contains confidential information relating to Bayer’s marketing, sales, and pricing strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.

Trial Ex. No.	Document	Portion(s) to Seal	Ruling
92	<b>Trial Exhibit 92:</b> 30(b)(6) Stipulation	Highlighted portions on pp.1-7 and Exhibits A, B	Granted, as it contains confidential information relating to Bayer's agreements with retailers and distributors. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
194	<b>Trial Exhibit 194:</b> Pricing Strategy Workshop United States	Document in entirety	Granted, as it contains confidential information relating to Bayer's pricing strategies and survey methods. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
195	<b>Trial Exhibit 195:</b> PetSmart Presentation	Highlighted portions at pp.2-3, 8-12	Granted, as it contains confidential information relating to Bayer's agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
196	<b>Trial Exhibit 196:</b> PetSmart Planogram	Document in entirety	Granted, as it contains confidential information of a retailer. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
213	<b>Trial Exhibit 213:</b> Petco Marketing Agreement	Highlighted portions at pp.1-5, 7, 9	Granted, as it contains confidential information relating to Bayer's agreements with retailers. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
514	<b>Trial Exhibit 514:</b> March 2017 Global Brand Team Presentation	Highlighted portions at pp. 1-2, 11-18, 20, 22-29, 31-34, and 37	Granted, as it contains confidential information relating to Bayer's marketing, sales, and pricing strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1003	<b>Trial Exhibit 1003:</b> Bayer Antitrust Compliance Policy	Document in entirety	Granted, as it contains confidential information regarding Bayer's legal policies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1004	<b>Trial Exhibit 1004:</b> Bayer Email Thread Re KAM Round Table	Document in entirety	Granted, as it contains confidential information relating to Bayer's marketing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1005	<b>Trial Exhibit 1005:</b> Bayer Email Thread Re Advantage Generic Talking Points	Highlighted portions	Granted, as it contains confidential information relating to Bayer's distribution strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1012	<b>Trial Exhibit 1012:</b> Bayer Email Thread Re Frontline Market Share Data	Highlighted portions	Granted, as it contains confidential information relating to Bayer's marketing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1014	<b>Trial Exhibit 1014:</b> Bayer Email Thread Re Frontline Market Share Data	Highlighted portions	Granted, as it contains confidential information relating to Bayer's marketing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1028	<b>Trial Exhibit 1028:</b> Bayer Email Thread Re DefenseCare Alignment Options	Highlighted portions at pp. 2-6	Granted, as it contains confidential information relating to Bayer's marketing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.


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1029	<b>Trial Exhibit 1029:</b> Distributor Retail Summit Deck	Highlighted portions at pp. 2-3, 7-8, 11, 13	Granted, as it contains confidential information relating to Bayer's distribution strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1043	<b>Trial Exhibit 1043:</b> Bayer Email Thread Re Phillips Advertisement	Highlighted portions	Granted, as it contains confidential information relating to Bayer's pricing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1055	<b>Trial Exhibit 1055:</b> Bayer Email Thread with Drs. Foster & Smith	Document in entirety	Granted, as it contains confidential information relating to Bayer's agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1056	<b>Trial Exhibit 1056:</b> Bayer Email Thread with Drs. Foster & Smith	Document in entirety	Granted, as it contains confidential information relating to Bayer's agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1057	<b>Trial Exhibit 1057:</b> Bayer Email Thread with Petco	Document in entirety	Granted, as it contains confidential information relating to Bayer's agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1058	<b>Trial Exhibit 1058:</b> Bayer Email Thread Re Email to Petco Re Bayer Terms Updates	Highlighted portions	Granted, as it contains confidential information relating to Bayer's agreements with retailers. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1067	<b>Trial Exhibit 1067:</b> Bayer 2016 Presentation to Petco	Document in entirety	Granted, as it contains confidential information relating to Bayer's agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1069	<b>Trial Exhibit 1069:</b> Bayer 2016 Presentation to PetSmart	Document in entirety	Granted, as it contains confidential information relating to Bayer's agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1073	<b>Trial Exhibit 1073:</b> Bayer Email Thread Re Drs. Foster & Smith Meeting Agenda	Highlighted portions	Granted, as it contains confidential information relating to Bayer's agreements and discussions with retailers. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1082	<b>Trial Exhibit 1082:</b> 2018-2020 Animal Supply Co. Distribution Agreement	Highlighted portions	Granted, as it contains confidential information relating to Bayer's agreements with distributors. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1083	<b>Trial Exhibit 1083:</b> Bayer Email Thread Re Retailer Acceptance of Imidacloprid Exclusivity Discount	Highlighted portions	Granted, as it contains confidential information relating to Bayer's agreements with retailers. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1084	<b>Trial Exhibit 1084:</b> Drs. Foster & Smith 2018-2020 Purchase Agreement	Highlighted portions	Granted, as it contains confidential information relating to Bayer's agreements with retailers. <i>See</i> Boshkoff Decl. ¶¶ 3-4.

Trial Ex. No.	Document	Portion(s) to Seal	Ruling
1086	<b>Trial Exhibit 1086:</b> Petco Presentation	Highlighted portions at pp. 3-4, 6-9, 15, 18	Granted, as it contains confidential information relating to Bayer's agreements with retailers and sales strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1414	<b>Trial Exhibit 1414:</b> Bayer Spreadsheet re DefenseCare	Document in entirety	Granted, as it contains confidential information relating to Bayer's marketing and sales strategies. <i>See</i> Boshkoff Decl. ¶¶ 3-4.
1426	<b>Trial Exhibit 1426:</b> Distributor Retail Summit Presentation	Document in entirety	Granted, as it contains confidential information relating to Bayer's distribution strategy. <i>See</i> Boshkoff Decl. ¶¶ 3-4.

### III. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the administrative motion to seal at ECF No. 496 is GRANTED.

Dated: August 26, 2024

  
 BETH LABSON FREEMAN  
 United States District Judge